REMARKS

In a final Office Action dated April 21, 2006, the Examiner rejected claim 8 under 35 U.S.C. §102(e) as being anticipated by Butler et al. (U.S. patent no. 6,545,989, hereinafter referred to as "Butler") and rejected claims 10-11 under 35 U.S.C. §102(e) as being anticipated by Shaffer et al. (U.S. patent no. 6,683,889, hereinafter referred to as "Shaffer"). The Examiner then rejected the following claims under 35 U.S.C. §103(a) as being unpatentable over the following art: claims 1, 2, and 4 being unpatentable over Shaffer, claims 3 and 5-7 as being unpatentable over Shaffer in view of Kwan (U.S. patent no. 6,504,838), and claim 12 as being unpatentable over Shaffer in view of Vaid et al. (U.S. patent no. 6,119,235). The Examiner allowed claim 9. The rejections are traversed and reconsideration is hereby respectfully requested.

The Examiner the rejected claims 1, 2, and 4 under 35 U.S.C. §103(a) as being unpatentable over Shaffer. Specifically, with respect to claim 1, the Examiner contended that Shaffer teaches a method for determining a jitter buffer depth target (FIG. 6) comprising steps of determining a radio frequency (RF) load metric corresponding to a base site, comparing the determined RF load metric to an RF load threshold to produce a comparison, and determining a jitter buffer depth target based on the comparison (col. 3, lines 33-41; col. 5, line 27; and col. 5, lines 30-38). With respect to the RF load metric, the Examiner contended that a packet received in a buffer is a load, as claimed, and that an RF load metric can be a characteristic between an inter-packet gap and an amount of data stored in a jitter buffer, as an RF load metric is not specifically defined in the claim. The Examiner acknowledged that Shaffer does not teach an RF load metric corresponding to a base site, or that the received signal is received at a base site, but contended that this would have been obvious based on Shaffer teaching a different audio codec to be used for implementing/analyzing a different received signal (col. 3, lines 32-45; col. 4, lines 14-27). The applicant respectfully disagrees with the Examiner's application of Shaffer to the pending application.

The concept of an RF load metric is well-known in the art – it is a metric associated with a loading of an RF, or air, interface in a wireless communication system. A packet in a buffer is just a queue load. It is not consuming, and does not indicate an

availability of, RF (air interface) resources. Shaffer merely teaches a system where a jitter buffer depth is adjusted based on an occupancy of the jitter buffer, that is, a delay within the jitter buffer. Observing an amount of data that is stored in a jitter buffer is not a determination of an RF load. Nowhere does Shaffer teach any determining of an RF, or air interface, load metric, let alone adjusting a jitter buffer depth based on an RF load metric. For example, an amount of data stored in a jitter buffer is something that can be observed only after a call is in progress. By contrast, an RF load metric, for example, a number of channels available at a base site, can be observed before a call actually begins and thus claim 1 teaches a jitter buffer depth that may be set before the call starts and before any observations, and speech sequences leading to audio degradation, have occurred. This is not taught by Shaffer. Furthermore, a system may be more or less loaded and yet there may be no difference in buffer occupancy. Nowhere does Shaffer teach any determining of an RF load metric, and therefore Shaffer does not teach the features of claim 1 of determining an RF load metric corresponding to a base site and determining a jitter buffer depth target based on a comparison of the determined RF load metric to an RF load threshold. Accordingly, the applicant respectfully requests that claim 1 may now be passed to allowance

Claim 4 teaches determining to retransmit erroneously received frames when the determined RF load metric is greater than the RF load threshold. In rejecting claim 4, the Examiner contended that Shaffer teaches retransmissions and reevaluating retransmitted packets in a jitter buffer at col. 5, line 23 to col. 6, line 4. This section merely teaches adjusting a depth of a jitter buffer based on a rate at which packets are received into a jitter buffer, including determining a gap between packet arrivals. Gaps in packet arrivals occur for many reasons, such as fading. That is why the packets have sequence numbers, due to their propagation over different paths and arrival out of sequence. A gap in arrival does not equate to a retransmission, and merely noting a gap does not equate to a determination to retransmit. Nowhere here, or anywhere else in Shaffer, does Shaffer teach anything concerning retransmissions, and nowhere Shaffer teach any basis for determining whether to retransmit. For this reason, and since claims 2-7 depend upon allowable claim 1, the applicant respectfully request that claims 2-7 may now be passed to allowance.

The Examiner rejected claim 8 under 35 U.S.C. §102(e) as being anticipated by Butler. Specifically, the Examiner contended that Butler teaches a method of conveying data from a transmitting communication device to a receiving communication device that are each in wireless communication with a wireless infrastructure (col. 1, lines 15-19; col. 12, line 41, to col. 13, line 7; and col. 15, lines 54-67) comprising steps of establishing a reverse link between the transmitting communication device and the wireless infrastructure and establishing a forward link between the wireless infrastructure and the receiving communication device (col. 12, line 41, to col. 13, line 7), wherein the reverse link is established prior to the establishment of the forward link (col. 12, line 41, to col. 13, line 7), and signaling a user of the transmitting communication device to begin transmitting data prior to the establishment of the forward link (col. 12, line 41, to col. 13, line 7). The applicant respectfully disagrees with the Examiner's application of Butler to the pending application.

Butler merely teaches a single wireless communication device in communication with a wireless base station. Claim 8 concerns an end-to-end communication between a transmitting communication device that transmits to a wireless infrastructure via a reverse link (e.g., a speaker reverse link 142 at MS 102 in the specification) and a different, receiving communication device that receives from the wireless infrastructure via a forward link (e.g., a listener forward link 144, 148 at MSs 103 and 104). Butler teaches nothing concerning an establishing both of the reverse link on the transmitting side of the communication and the forward link on the receiving side of the communication. Furthermore, in the sections cited by the Examiner, Butler merely teaches the single wireless communication device transmitting a wireless signal to a base site via a reverse link and receiving an acknowledgement from the base site via a forward link. Nowhere does Butler teach an order in which these two links are established with the single communication device, let alone a signaling of a user of the communication device to begin transmitting data, for example, a playing of a Talk Permit Tone to the user, prior to the establishment of the forward link.

Therefore, Butler does not teach the features of claim 8 of a method of conveying data from a transmitting communication device to a receiving communication device in a packet data communication system, wherein the transmitting communication device and

the receiving communication device are each in wireless communication with a wireless infrastructure and wherein the method includes steps of establishing a reverse link between the transmitting communication device and the wireless infrastructure, establishing a forward link between the wireless infrastructure and the receiving communication device, wherein the reverse link is established prior to the establishment of the forward link, and signaling a user of the transmitting communication device to begin transmitting data prior to the establishment of the forward link. Accordingly, the applicant respectfully requests that claim 8 may now be passed to allowance

The Examiner rejected claim 10 under 35 U.S.C. §102(e) as being anticipated by Shaffer. Claim 10 teaches a method for determining a size of a jitter buffer determining a number of retransmissions permitted of an erroneously received frame and determining a size of the jitter buffer based on the determined number of permitted retransmissions. In rejecting claim 10, the Examiner contended that Shaffer teaches analyzing an incoming packet rate and equated this to a determining of a number of retransmissions.

As noted above, Shaffer teaches nothing concerning retransmissions, let alone how to determine a number of retransmissions based on a packet rate. A mere detecting of a packet rate is not the same as an analysis of whether received packets are retransmissions. Therefore, Shaffer does not teach the features of claim 10 of determining a number of retransmissions permitted of an erroneously received frame and determining a size of the jitter buffer based on the determined number of permitted retransmissions. Accordingly, the applicant respectfully request that claim 10 may now be passed to allowance.

Since claims 11 and 12 depend upon allowable claim 10, the applicant respectfully request that claims 11 and 12 may now be passed to allowance.

As the applicant has overcome all substantive rejections and objections given by the Examiner and has complied with all requests properly presented by the Examiner, the applicant contends that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the applicant respectfully solicits allowance of the application. If the Examiner is of the opinion that

any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter.

Respectfully submitted,
John Harris

By:___/Steven May/_____

Steven A. May
Attorney for Applicants
Registration No. 44,912
Phone No.: 847/576-3635
Fax No.: 847/576-3750